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A Context Based Model to Frame Political Victimhood: Experiences from Northern Ireland and the Basque Country

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A Context-based Model to Frame Political Victimhood. Experiences from Northern Ireland and the Basque Country

Abstract

All societies moving towards peace must establish reparation measures for victims of political violence. That is not an easy task, though: political victimhood is a controversial concept by itself and all victims of this type are mixed up with general politics from both the past and the present. In divided societies, such as the North of Ireland and the Basque Country, the controversies about the definition of political victimhood reproduce old divisions from the past. Drawing from these two cases, this research project gathers some initial thoughts to conceptualise political victimhood into three different models: the harm, blame and context-based models. The primary contribution of the article lies in the formulation of the third model, the context-based framework.

Keywords

Victims of political violence, Basque Country, Northern Ireland, Transitional Justice, Conflict Transformation.

1. Introduction

The demand for victim-centred policies has increased along with the development of transitional justice and the need to deal with the past. In societies emerging from conflict or political transition related to systemic human rights violations, the need to put victims at the centre of the politics of the past goes unquestioned (Robins, 2011; Findlay, 2009). All the parties involved in conflict, peacebuilding and transitional justice agree on this. The root of the problem, however, lies in how to define these victims: primarily who should be included or excluded from this definition. Like other regions emerging from a transition towards peace, the North of Ireland and the Basque Country,ⁱ two cases of divided societies and conflicted democracies (Ní Aoláin and Campbell, 2005), also face this political controversy about how to define victims. This article analyses three different models for conceptualising political victimhood in divided societies based on these two cases and gives shape to a new framework for approaching political victimhood; the context-based model.

The debates about how to deal with the past in the North of Ireland and the Basque Country remain a burning issue in the process of conflict transformation, where the past has become *war by other means*. Although several mechanisms have been implemented, a shared and comprehensive strategy

to solve legacy issues is yet to be negotiated. The competing narratives about the past, and the lack of a shared strategy for the future, constitute some of the reasons for this situation. The status of victims of the conflict is a major concern in both cases too. Rather than having sufficient buy-in to the general term ‘victim of the conflict’ there have been persistent politicised attempts to qualify or question the victimhood of some by attaching prefixes like ‘innocent’, ‘real’ and ‘deserving’ to the term victim (Dawson, 2014). Whether victims have been involved previously in the conflict is critical to understanding the prevalence of such prefixes and their accompanying narratives against the “equation” of victims. The construction of victimhood and the debates around them are currently reproducing the political divisions from the past in these two divided societies.

Thus, in both the North of Ireland and the Basque Country victims are caught in the middle of these broader political debates on how to define the past and how to agree on a strategy for the future. The confrontation between narratives that define the past as a problem of ‘terrorism’ and those that define it as a problem of political violence remains strong in both places. In general terms, the narrative that frames the past as political violence supports an inclusive definition of victim based on the harm caused to the victim, whereas the narratives that understand the past as ‘terrorism’ argue for a less inclusive definition of victim that imposes limitations based on blame. The aim of this article is to shed light on how these two models conceptualise victimhood and to propose a new framework -a *context* based model – that might help to overcome the divisions from the past by theorising political victimhood from a new perspective. The article will first give an overview of the transition from conflict in the case studies, it will then analyse the framework to conceptualise political victimhood and, finally, it will explore the different conceptual models to deal with political victimhood in divided societies emphasising the contribution of the proposed context-based framework.

2. Victims and political transition in the North of Ireland and the Basque Country

In their 2000 study, Beristain and Paez calculated the impact of violence, regarding the number of killings, in the North of Ireland and the Basque Country. They noted that the impact in the Basque Country is that of 0.34 individuals killed out of 1,000 people, whereas in Northern Ireland the impact is that of 2 individuals per 1,000 (Martin Beristain and Paez Rovira, 2000: 73). Despite the impact being greater in the North of Ireland, the authors concluded that the impact in the Basque Country is still significant as the proportionate impact is similar to that in Argentina during the military *junta*. In

general terms, the violent past can be considered low intensity in both cases: around 3,636 individuals were killed in the North of Ireland (McKittrick *et al.*, 1999: 1476) and 1,004 in the Basque Country over a 40 year period (Basque government, 2013). In both cases non-state groups were responsible for the majority of deaths and the state was involved in *at least* 10% of them (this figure could rise if cases of collusion between state and non-state forces were properly attributed). Establishing clear figures for non-fatal victims - injured victims, the threatened, the tortured and people more generally affected by the conflict- is more difficult and complex to define and subsequently record. For instance, in its latest report (December 2017), the Basque government acknowledged that there were at least 4,113 cases of torture of prisoners between 1960 and 2014.

The victims issue has been at the centre of strategies to deal with the past in the North of Ireland and the Basque Country since the beginning of their political transitions. This transition took off in the North of Ireland in 1998 with the signing of the Good Friday Agreement; in the Basque case, it could be argued that the transition to peace began in 2011 when Euskadi Ta Askatasuna (ETA) unilaterally decided to end its armed campaign (Murua, 2016; Whitfield, 2014). Both cases share some frames in terms of their conflicts: both have a relationship to nationalism, both conflicts took place in European democratic countries contested through political violence (although the first part of the Basque conflict took place during the Spanish dictatorship, until 1978) and both occurred during a similar period of time. This has developed several historical and political links between the two cases (Irvin, 1999; Maillo, 2005; Sanchez-Cuenca, 2007; Rooney, 2007; Lynch and Argomaniz, 2014). As an example of this, it is relevant to note that three out of the six international leaders involved in the conference to promote the peace process in the Basque Country in 2011 were also involved in the Northern Ireland transitionⁱⁱ and attempts to learn lessons from each other have taken place regarding broad political matters and victims-related issues.

Despite these connections and similarities, the steps taken towards peace and dealing with the past have developed very differently in each case. In the North of Ireland, the GFA did not include any proposals for dealing with the past although several attempts to negotiate strategies to address legacy issues have been made since then (Bell, 2009: 1097). The biggest step for victims was taken in 2006 when the Victims and Survivors (Northern Ireland) Order created the Northern Ireland Victims Commission and later the Victims Forum. However, the debates about how to deal with the past and victims have not been resolved yet. Several attempts to establish new mechanisms to promote truth, justice and reconciliation have failed in recent years, such as the recommendations made by the

Consultative Group on the Past (CGP) (2009) and the implementation of the Stormont House Agreement (SHA) (2014).

The victims issue has developed differently in the Basque Country. There is not an official peace process and two different paths regarding transition and peace can be distinguished: the *Spanish path*, which includes a single anti-terrorist position or narrative, and the *Basque path*, which includes a peacebuilding framework and different understandings of the past. The attitude towards victims has varied depending on the path and, consequently, victims have different treatment in Spanish and Basque legislation. The Basque regional institutions (in the Basque Autonomous Community, Navarre and the French Basque Country) are, actually, involved in the process of conflict transformation promoting the disarmament and demobilisation of ETA (the disarmament concluded in April 2017), recognising different type of victims and demanding a solution for Basque political prisoners (currently, there are around 300 prisoners).

3. Some slippery terms: Political victimhood, harm and blame

While the focus on victim-centred initiatives has increased in the last decade so too has disagreement on how to define the past and how to define victims in Northern Ireland and the Basque Country. One of the reasons for this difficulty is the slippery lines between victims and perpetrators, harm and blame and political and non-political actors, whose definitions are often dependent on the experience and personality of the individual. This is problematic when it comes to applying traditional criminological conceptualisations of victimhood that attempt to categorise different types of victim to contexts like Northern Ireland and the Basque Country. Notable among these is Mendelshon's six category typology that runs along a continuum from the 'completely innocent' victim (for example a young child subject to a violent attack) at one end to the 'most guilty victim' (an aggressor who is eventually killed) at the other end (Walklate, 1989: 3). Leading on from this typology, the notion of an 'ideal victim' intrinsically linked to innocence and passivity was further developed by Nils Christie (1986). Couched in this innocence and passivity, the 'ideal victim' (or 'innocent victim') quickly assumed symbolically powerful moral superiority over their victimiser who was seen as neither innocent nor passive (Van Dijk, 2009).

While these typologies gained traction in domestic approaches to everyday crime and deviance (Walklate, 1986: 2), their applicability to divided societies emerging from political conflict has always

been problematic (McEvoy and McConnachie, 2012). Several scholars have called into question the use of these typologies in conflict zones (Govier and Verwoerd, 2004; Borer, 2003; Bouris, 2007; Root, 2012: 130; Moffet, 2016; Brewer and Hayes, 2011). Where acts of violence committed in a domestic context can lend themselves to such typologies, in contexts where violence is collectivised and often responsive to other violence or structural inequality the waters begin to muddy due to incredible fluidity in terms of defining victim and victimiser. The grim reality of political conflict is that someone bereaved by a killing committed in the name of one ideological cause can very quickly turn into a victimiser should they avenge that killing through violence committed in the name of another ideological cause. While the fluidity of the victim-victimiser dynamic has been noted in relation to armed non-state actors in Northern Ireland (Shirlow and McEvoy, 2008), framing those involved in conflict is inherently difficult for traditional victimological understandings of victimhood because the combatant seems to have the resilience and capacity for violence that victims traditionally viewed as passive and vulnerable do not (McGarry and Walklate, 2011).

In transitional societies that have yet to 'deal with the past' this is further complicated when victimhood collides with politics in a contentious 'politics of victimhood' (Bouris, 2007). In the aftermath of conflict it is the natural conflation of victimhood with innocence that makes it so politically covetous. Collectively claiming victimhood couched in innocence is a shorthand way of exonerating 'us' from blame for the conflict and burdening this responsibility onto 'them'. These claims are often shaped by ingroup worldviews given that over the course of prolonged political conflict collectives amass narratives, memories and discourses that reaffirm biased notions of the self being innocent and righteous and the 'other' being guilty and inherently evil (Aiken, 2013: 17).

Far from this phenomenon being unique to either the Basque Country or Northern Ireland, Ewald (2002: 93) contends that the political definition and construction of the victim in post-conflict societies is 'a powerful tool to organise social control in those transitional societies.' Competing narratives in Latin America simultaneously frame the era of military juntas as deliverance from the evil of communism with any subsequent violence being a 'necessary evil' or conversely as an era of repressive dictatorship characterised by excessive human rights violations (Jelin, 2003). How victims of enforced disappearance in Cyprus are framed also provides an interesting lens to view competing frames for victimhood through. On the one hand Greek Cypriots have framed their disappeared as the 'missing' victims of Turkish human rights abuse in what is an attempt to attribute blame for the excesses of the conflict to Turkey through a politicised human rights discourse. The Turkish, on the

other hand, have spurned frames of passivity and innocence by framing their missing as national martyrs rather than victims (Kovras, 2014: 2).

The complex background to the conflict in the North of Ireland stretches back for centuries allowing everyone to stake a claim to the victim identity while simultaneously labelling the ‘other’ as a perpetrator (Brewer, 2010: 169). This reflects competing collective worldviews of the origins and consequences of political violence in the region. For most Irish republicans, and many Nationalists, Irish Republican Army (IRA) violence represented a legitimate liberation struggle in response to a state birthed by colonialism, marred by discrimination and held by military occupation. Unionists, drawn for the most part from the majority Protestant community, by contrast view themselves as victims of illegitimate IRA violence and see the harsher aspects of the state security response as necessary in light of IRA ‘terrorism’. The British state, despite being responsible for the colonial intervention of partition and being actively involved in the conflict throughout, has fallaciously postured as a neutral broker in what they depict as a sectarian conflict between warring factions (Aiken, 2013). Similar disagreements characterise the understanding and representation of ETA violence in the Basque Country. Some Basque Nationalists in favour of Basque self-determination viewed the ETA campaign as a legitimate expression of the desire of self-determination and the fight with the Spanish state, particularly during the dictatorship. The Spanish and the French states have sought to portray the ETA campaign as one of wanton ‘terrorism’ (Diaz, 2015). Among these two big blocks, indeed, we can find more nuanced narratives that do not fit with one or the other *grand narrative*, showing just how complex divided societies are.

Although both the Basque Country and Northern Ireland have witnessed an end to wide scale political violence the absence of mechanisms to address the legacy of that violence has prevented traditional mindsets being transcended. Instead competing notions of blame and victimhood have been locked down and become a proxy means of making moral claims about the past in a way that purportedly speaks to the legitimacy and righteousness of certain acts and the illegitimacy and wrongness of other acts (Brewer and Hayes, 2014; Fowler Graham, 2014). While this shows that the definition of harm and blame can be politically controversial and multilayered there is nonetheless still a lack of theorisation in the field of victimology when it comes to dealing with victims of political conflict in divided societies. Sisson has argued that the process of social and political transformation from conflict should transform victim and perpetrator identities and replace them with ‘the new identity of being a citizen of society with the rights and duties of citizenship as part of the new social contract’

(Sisson, 2010: 15). While this is a commendable assertion, the way in which victims of political violence could be conceptualised remains largely understudied. This article aims to plug this gap by critiquing how victimhood through political conflict has been conceptualised in existing approaches and further offering some initial thoughts on how it can be newly conceptualised through a new context-based approach.

4. Three different approaches to frame political victimhood

Based on the theoretical understanding and limitations of political victimhood in the case studies of Northern Ireland and the Basque Country explained above, we can conclude that there are at least three models to conceptualise victims of political violence in divided societies: the *blame* based model, the *harm* based model and the *context* based models. In both case studies we can find a combination of the first two models, while the third model consists of a new framework that aims at transforming victims' identity through the recognition of their rights *and* the complexities of their personal context.

4.1 Harm based model

The first model frames victimhood based on the harm suffered by the victim. Consequentially, a victim would be anyone who suffered in the context of a violent confrontation whether it is attributable to non-state or state actors. All victims who suffered as a consequence of the conflict, regardless of their status, would receive the same recognition. This is an open and flexible framework, considering the difficulties to clearly theorise harm and the diversity in the ways to suffer and express it. Some of the difficulties to theorise harm are the problems to clearly establish what constitutes direct and non-direct violence, and the conceptual problems to define collective victimhood. Schori-Eya *et al.* (2014) argue for a multilayered understanding of collective victimhood and they explain that there are three layers in this respect: historical victimhood, general conflict victimhood, and conflict event victimhood. Their view adheres to a harm based understanding of victimhood, but it can cause problems when establishing specific measures for truth and justice (mainly individual reparations), considering the wide and open definition of victims it entails.

In both Northern Ireland and the Basque Country, some political parties (primarily nationalist) advocate for a harm based approach. This is also the model followed in part of the legislative approach

in the North of Ireland, which, in 2006, defined victims as those who were “affected by the conflict”,ⁱⁱⁱ regardless of who the perpetrator was. The Victims Order was passed in the context of peace negotiations, thus the inclusive and harm based model adopted in it needs to be understood in that political context. This harm based approach is also the one adopted by the UN Basic Principles on reparations (2006), which define victims as those “who individually or collectively suffered harm”.

Victims of state violence in Northern Ireland and the Basque Country defend this model and argue against any “hierarchy” of victims. Their primary argument lies in the idea that the suffering of each victim, and their relatives, is always the same. This view contrasts with that of some victims’ groups of non-state groups, mainly victims of the IRA and ETA, who argue against a harm based model and demand distinctions be made between victims. Their point is that victims cannot be “equated” and a distinction needs to be made between legitimate and illegitimate victims.^{iv}

The harm based model attempts to break the divisions of the past by offering equal treatment for victims. This is the spirit of the Victims Order in Northern Ireland, which, nevertheless, only focuses on delivering services to victims and *does not* include specific economic or symbolic reparations for them. The definition of harm, particularly when it comes to psychological harm, is highly problematic and it can be an obstacle in the process to grant economic reparation to victims. Yet, it could be argued that, due to its inclusive approach, the harm based model fits within a peacebuilding and conflict transformation strategy which aims at breaking divisions between victims.

4.2 Blame based model

The basis of the blame based model is that victims need to be categorised depending on who was the perpetrator or who was the victim. In the North of Ireland and the Basque Country this model is behind several legislative initiatives. Unionist political parties and, as noted previously, several victims’ groups demand this model. In Northern Ireland the main demand by victims of non-state groups is that victims can only be “innocent”, meaning that those who are also members of armed groups cannot be victims. One of the key proposal made by the CGP was rejected precisely because of this view: they recommended granting the same amount of money to all the relatives of death victims of the conflict (taking as a reference the Victims Order), but victims groups of Republican violence protested against it and the proposal was finally rejected. The current obstacles to granting a pension for the seriously injured also go in line with this view (Moffett 2016), which categorically

opposes the harm based definition of victimhood. In the Basque Country, the biggest victims' groups of victims of ETA (AVT and Covite) argue against the "equation" of victims and, consequently, they do not consider victims of state violence to be on the same level as victims of ETA. The Spanish legislation for victims of terrorism (1999, 2011) goes in line with this view and the recent creation of the Memorial Centre for Victims of Terrorism in Vitoria-Gasteiz (Basque Country) also illustrates this approach defended by the Spanish authorities. Thus, in both Northern Ireland and the Basque Country, victims of ETA and republican groups, as well as Unionist political parties and Spanish authorities, argue against a harm based approach to political victimhood; instead, their definition of victimhood is always connected with the status of the perpetrator and the status of the victim.

The rejection of victim equation reflects the fact that often it is not enough to be seen just as a victim because one must in fact be seen as a particular kind of victim - the 'innocent victim'. The more 'innocent' a victim can claim to be the more legitimate their claim to victimhood (Walklate, 1989). The more legitimate their claim to victimhood, so the logic goes, the less legitimate any apportioning of blame to them is. The outworkings of this has seen certain victims' groups in the North of Ireland spending more time trying to deny the status of victim to others than actually concentrating on meeting the needs of their own constituency (Rolston, 2002). In particular, victims from the Unionist community have used a 'rule of law' narrative to deny any 'moral equivalence' between the forces of law and order and the 'terrorist' (Lawther, 2014). The Civil Service (Special Advisers) Act Northern Ireland, passed in 2013 and commonly known as the Spad act, also follows the blame based model. The act, which bars anyone with convictions from being special advisers in the Northern Ireland government, reproduces almost verbatim the debates over victimhood and the past (Hearty, 2016).

Following the demonstrably false logic that agents of the state never violate their own laws, this has involved asserting that the victims of state violence somehow brought their victimisation onto themselves. This mirrors the victimological phenomenon of 'victim precipitation' whereby the victim is said to have contributed to or invited their victimisation either by act or omission (Walkate, 1989). In many cases in the North of Ireland there is little elaboration of how or why victims did this but the inference is nonetheless enough to taint any claim they may have to innocence. More fundamentally these discourses also overlook the fact that law itself can be at the epicentre of structural inequality that leads to and perpetuates victimisation (Mawby and Walklate, 1994). Ruth Jamieson (2016) has exposed the fallacy of this approach in Northern Ireland by arguing that blaming the conflict on a few paramilitaries is part of a 'pervasive good of the majority' myth that decontextualises violence from

wider dynamics and structural causes.

The legislation that applies to victims of political violence in the Basque case is divided into a variety of laws, which also distinguish between the dictatorial and democratic period of the Basque conflict. All the legislation follows the blame based model, but the Basque legislation is more inclusive than the Spanish legislation, which excludes victims of the state. In addition to Spanish laws, the Basque parliament and the parliament in Navarre have passed several laws that expand the Spanish legislation for victims of political violence. Thus, both territories (the Basque Autonomous Community and Navarre) have passed legislation for victims of ‘terrorism’ (1999, 2008, 2010)^v but, more recently, they have also approved several laws to include victims of state forces and right wing groups (2012, 2015, 2016).^{vi} As an example of the political fight over victimhood, the Spanish Constitutional Court has suspended some of the articles in this legislation. In any case, the Basque legislative approach to victims is temporarily fragmented and it is divided depending on the definition of the perpetrator (‘terrorism’, police abuse, etc.).^{vii}

Regarding Spanish legislation, the issue of blame has become prominent in recent years. The modification of the Law of Victims of Terrorism in 2011 also included an increase in the amount of compensation granted to victims; however, at this point the Spanish government also decided not to increase compensation to victims they considered to also be perpetrators.^{viii} The justification given by the Spanish government for not increasing compensation to these victims (who are however legally recognised as victims) is based on a provision in the European Convention on the Compensation of Victims of Violent Crimes (1983), which grants discretion on the amount of compensation provided when the victim had committed a crime. The affected families brought the cases to the Spanish Constitutional Court and the cases are currently ongoing. In short, the *Spanish path* fits within a blame based model because it is based on the definition of the perpetrator and the status of the victims. In contrast, the *Basque path* is more inclusive but fragmented, and also based on the blame based model that defines victims depending on the perpetrator, rather than the harm caused.

In both case studies the legislation is very complex, conformed by several laws and legal tools which affect victims of political violence. Despite the fact that the harm based model is demanded by certain victims’ groups and political parties, in both cases too, the blame based model is the approach taken in various legal tools. Yet, this model, as pointed out above, can discriminate against certain victims and it reproduces old divisions from the past.

4.3. A fresh framework: Context based model

The proposed context-based framework is an attempt to establish a new understanding of political victimhood that rejects fixed harm and blame based approaches. In this model, political victimhood is framed within the process of conflict transformation and victim identity is understood as a social process that can be transformed. Along with the understanding of victimhood as a social process, the context based model contains two other pillars: the need to accommodate the policy on victims to the specific circumstances of each conflicted place and the necessity to frame each individual victim within a complex framework that includes singularities and non-dichotomous layers of victimization.

The critical aspect of this model is to recognise victims regardless of the status of the perpetrator or/and the victims, but to do so while understanding that differences of context and experience do exist. The aim would be to progressively avoid the label “victims of...” and empower victims solely as “victims”. This model is framed as a process in which, first of all, it is required to recognise the political status of all victims and, secondly, there is a need to understand that each victim is different and there are a variety of realities and experiences in this respect. Ideally, the process would transform the victim identity from being one of ‘political victims of conflict’, which sees victims as resources to be drawn on in macro-level political debates on the past and attributions of collective right/wrong, to being one of ‘victims of political conflict’ which sees victims as individual victims who also happen to be collective rights holders that should be suited to the needs rising from the particular circumstances of their different victimisations. The approach of individualisation proposed is not, however, to posit that patterns of victimisation do not exist or cannot prove relevant. They do and are, as is most notably seen in proposals for truth recovery mechanisms under the SHA that have advocated taken a thematic approach of looking at analogous cases collectively (McEvoy & Bryson 2016). If this is done in line with the context-based approach being proposed here, this would avoid thematic approaches being based on dichotomous views of victimhood that are ripe for political manipulation. Instead, the identification and examination of complex patterns of victimisation would be geared towards making victims feel that their individual circumstances are taken into consideration while at the same time ensuring that not all cases are treated as if they were exactly the same.

In both the Basque Country and Northern Ireland, the relatively low number of killings could make it easier to implement a context based approach. As a consequence of fewer victims requiring investigation and reparation, patterns of complex victimisation could be easier to identify. Conflicted places with larger amount of victims could find it harder to investigate all the complexities of each

victim; yet, they could similarly establish patterns of complex victimhood adapted to their specific and individual singularities. The identification and recognition of these patterns of complex situations should go together with the overall conflict transformation. The first milestone is the recognition of the political status.

Experiences in the North of Ireland and the Basque Country evidence how the fixed harm and blame based models have not been able to promote the overall process of conflict transformation - there is a clear necessity to establish a new framework that works towards resolving the problems from these two models. The incongruence of the harm and blame based models has, after all, frustrated the development of victim centric mechanisms to address the legacy of conflict in these two conflicts. Political negotiations on 'dealing with the past', particularly in the North of Ireland, have become a proxy means for competing political parties to reassert their own narrative on the past. This has allowed the victims' issue to descend into a game of political football in which victims themselves are little more than onlookers (Brewer, 2010). For this reason, a fresh approach to understanding victimhood that moves beyond the old division lines of the conflicted past by transforming victims' identity and broadening conflict transformation is required.

Perhaps the best way to do this is *not* to reject existing models in their entirety but to critically evaluate them for possible points of convergence that can be practically built upon. As such, the context based model for classifying victims of political violence recognises the specific circumstances of the victimization while also taking into consideration the issues of harm and blame. Rather than fixating on these issues, however, it places the primary emphasis on the specific circumstances and context in any given *individual* case. Although political victimhood has certain elements of collective victimhood due to the societal impact of this violence, the context-based model attends to the singularities of each victim. Individualising the issue further reflects that victims have individual needs and that not all victims have the same needs and/or interests (McEvoy and McConnachie, 2012). Furthermore, through individualising the matter of victimhood the context based model has the advantage of trying to depoliticise it by avoiding the necessity to adjudicate on the legitimacy of certain acts or indeed the legitimacy of the actions of certain parties to the conflict more generally. Thus it is best placed to meaningfully tackle the high complexities of political violence – particularly in high profile cases where the exact status of the victim and/or that of the perpetrator remains unclear and contested. Considering the complexities of these cases, existing approaches mirroring the divisions that are based on the definition of the perpetrator, which generally make a distinction

between *victims of the state* and *victims of non-state groups*, as well as the division between *innocent* and *non-innocent victims*, have strong limitations.

4.3.1 Limitations in the previous models

The categorization of victims depending on the definition of the perpetrator is limited because of the blurred lines of collaboration between state agents and non-state groups. In the Basque Country, for instance, there are several cases in which the exact level and nature of collaboration between right wing groups and state forces remains unclear. One of the most enigmatic cases is the case of *Naparra*, a member of the CCAA who disappeared in 1988. Today it remains unclear who was responsible for his killing and several hypotheses remain open. The initial hypothesis was that an ETA faction killed him, although in more recent years the hypothesis of right wing groups collaborating with the government has been studied. The collaboration of the Italian mafia has also been a line of investigation.

The distinction between innocent and non-innocent victims is also problematic because in certain cases we can find a double identity or controversy in clearly defining each identity. In the Basque case, for instance, one of the well-known cases is the disappearance of Lasa and Zabala, two alleged ETA members who were tortured, killed and disappeared in 1983. Their remains were found in 1995, 12 years after the state sponsored death squads GAL disappeared them in the French Basque Country (Woodworth, 2002). Since 2012, however, the relatives of Lasa and Zabala have been denied the full status of victims by the Spanish government. Cases in which prisoners suffered during detention are also clear examples of complex victim identities. In the Basque Country, the use of torture by Spanish police, which goes up to 10,000 allegations (Arzuaga, 2013), is currently being studied by the Basque government. Similar cases of torture can be found in the North of Ireland's prisons and interrogation centres during the 1970s and 80s (Shirlow & McEvoy, 2008; Newbery, 2009). Indeed, this issue has been earmarked as one of the areas for thematic truth recovery (McEvoy & Bryson, 2016).

The blame-based model distinction further collapses on itself in cases where families have lost loved ones in various different incidents in what can be seen as a microcosm reflecting the different circumstances seen throughout the conflict itself. One example from the North of Ireland is instructive. Kevin McKearney was shot dead by pro-state paramilitaries while working in his uncle's butcher shop. His uncle, Jack McKearney, was badly injured and died from his injuries some months later. McKearney was the third of a family of six children to die during the conflict; his brother was

an IRA operative killed in a premature explosion and another brother was one of eight IRA members shot dead in a pre-planned security force ambush at Loughgall in 1987, while his parents-in-law Charlie and Teresa Fox were to be shot dead by pro-state paramilitaries before the end of 1992 (McKittrick et al. 1999: 1267). Another brother endured the aforementioned hardships of interrogation and imprisonment as well as a hunger strike while serving a prison sentence for conflict related activity. According to the blame based model the family of Kevin McKearney are in the curious position of *being* and *not being* ‘innocent victims’ at the same time. In locating them within a blame-based model one would have to subscribe to a rather convoluted and confused state of affairs whereby the loss that comes from losing a loved one can be more legitimately grieved and acknowledged in the case of some family members than in others. A corollary to this illogicality is that the hurt and loss experienced and the victim centric needs resultant from this are somehow different in each case within the family. This quandary can be extrapolated out to the many other cases in the North of Ireland and the Basque Country where families have lost members through state and non-state violence alike and where some family members assumed an active role in the conflict when killed but others did not.

4.3.2 Critical elements in the new framework

A context-based model for dealing with victimhood would approach the issue by including some elements from the harm and blame-based models: it would recognise the suffering of all victims and their relatives, but, at the same time, it would remain consistent that all cases of victimisation are not similar because of the very complex and specific circumstances of each case. What we propose here is a nascent framework for a process based on three fundamentals: the status of victims of political violence, the recognition of equal rights and the individualisation of the process (meaning that not all victims are the same given that they have different complex experiences). The bottom line is to understand political victimhood as a social process that can transform victims’ identity into a new collective view on victimhood: the group of victims of the conflict who are simultaneously victims of different experiences.

A. The status of political victimhood

Policies for approaching political victimhood should focus on the similarities or points of convergence that all victims share. The alternative to starting from this premise is continuing to dwell on points of difference which, as the record in both cases shows, is incapable of progressing never mind resolving the victims’ issue. Since the shared status as victims of political conflict is the most

obvious commonality available, the starting point for dealing with victims from a context-based model should be this. As Bar-Tal et al. (2009) suggest, “the collective sense of victimhood develops progressively” and, therefore, a shared identity as ‘victims of the conflict’ can thus be promoted in the hope that, with time, it will supersede more divisive and politically charged labels like ‘innocent victims’ and ‘undeserving victims’ and victims of the state and victims of ‘terrorists’ to ultimately make them redundant.

Experiences of this collective identity can be found in both Northern Ireland and the Basque Country. The Victims and Survivors Forum, created in Northern Ireland in the light of the Victims Order (2006), gathers victims with different experiences in order to complement the work of the Victims and Survivors Commission. With a similar view, the Basque government created the initiative called Glencree in 2007, which gathered different victims in the Irish town. In a similar vein, in 2015 a group of Basque victims created the initiative Eraikiz and the Commission for Peace and Coexistence in the Basque Parliament and the Social Forum to Promote Peace in the Basque Country have also organised several initiatives to give voice to victims with different circumstances. At the minute, there is no official mechanism in the Basque Country similar to the Victims Forum in Northern Ireland, but, as we have seen, some steps have been taken towards this. Central to these initiatives is different victims coming together to promote a shared sense of political victimhood. This same element is the starting point in the context based model we propose here, but the new framework needs to go a step further and recognise victims’ rights as well as the singularities of each experience.

B. The recognition of rights

The second point of convergence should be to acknowledge that, due to the common political motivation of their victimhood, all victims should have the same rights recognised; the right to truth, justice, reparation and guarantees of non-repetition that fall under the umbrella of transitional justice. This aspect is missing from the harm based legislation in Northern Ireland, where the Victims Order is limited to victims’ needs at the exclusion of victims’ rights. This has been, precisely, one of the controversial aspects in the process to deal with the past, as measures for reparation, truth and justice have been negotiated in a different sphere from the implementation of the Victims Order. In terms of the Basque Country, we can find similar controversies. Victims’ rights and needs are recognised in several pieces of legislation, but the instruments are always fragmented and do not always include all victims.

This stage of the process involves a temporal interplay that moves the lens of focus from the past, which creates division among victims, to the present and subsequently to the future. In doing so, the most pertinent issue is no longer hair splitting about the exact status of victims or the legitimacy of certain acts (as initiated in the first stage of the process outlined above) but identifying and subsequently catering to victims' needs in the present and/or future. This is a slightly more elaborate approach than that already proffered in needs-based approaches in that it expands beyond strict material needs to include non-material needs like closure through truth and symbolic future needs like guarantees of non-repetition. Most vitally, this approach further builds on the first stage of the process by firstly further illuminating commonality, this time in terms of needs, and secondly by delivering on needs common across the victim constituency. The first two fundamentals of the context-based approach therefore refer to minimalist points of convergence when framing victims: the status of political victims and the explicit recognition of the right to truth, justice, reparation and guarantees of non-repetition for all these victims. This stage of the process should then transform the politics of victimhood seen in both sites into something qualitatively different; instead of ideological politicking over who is a victim the politicking becomes that of recognising victims' rights and pushing for these to be delivered.

C. Individualisation of the process: attending the special circumstances

Once the above have been established as negotiated starting points, the second element in the process should be to recognise the individual and specific context applicable to each victim. Somewhat paradoxically, this can be done from the premise of acknowledging that while victims are the same in terms of shared status and rights, they also differ in terms of the complex circumstances behind their victimisation, which in turn can impact on how their rights are translated into meeting their individual needs in practice. This approach would respect the individual will of each victim by giving them voice to articulate their own experience of victimisation which is then acknowledged while at the same time affording recognition that the complexities of victimisation in political conflict more generally means that it cannot be captured in its totality through dichotomous and non-flexible labels like perpetrator and victim. For example, under this approach victims could still assert the innocence of their loved one whereas this would *not* extend to a carte blanche right to deny victim status to those bereaved through more complex or contested circumstance nor would it allow them to deny victims' rights to such victims. The assertion of innocence in the individual case would be reduced to one predicated on factuality rather than on political expedience – the latter is often the case under the blame-based model. For this reason, the context based framework is a social process; the first two

stages need to focus on recognising the status of political victims and their rights, while this third stage focuses on highlighting the differences between them. The previous development of victims' collective identity could make it easier to recognise the complex singularities and patterns in each individual case.

Evidently, then, the context-based model is an approach that addresses victimhood collectively (as political victims and subjects of certain rights) and individually (understanding the singularities of each context). This approach necessitates processes designed for dealing with victims of political conflict taking two significant steps: one of recognising the shared points of all victims and one of understanding their differences. The first part of the process frames victims as passive actors (they are given status and rights), while the second part frames victims as active agents (Saaed, 2016) who are given voice to articulate the specific circumstances of their victimisation and to have their shared rights tailored according to these. This second part would also promote agency of victims in the overall conflict transformation process. In fact, they would become more influential actors by putting the delivery of their needs and rights on the political agenda without relying on, sometimes brazenly opportunistic, politicians to do so. Once the first stage of shared identity is developed, the demands of victims could be put forward by the collective constituency mobilised and advocating as a more formidable force of agency. Their new collective identity as victims of the conflict could thus empower them as a group and strengthen their agency in the process. Rather than a collective victimhood based on competition, the context based model puts forward a shared identity of victimhood that could promote agency of victims to demand their needs and rights. As explained by Schori-Eya (2014), collective identity is always multi-layered. This would underpin the context based framework; that is, the sense of collective identity promoted in the first stages of the process need to be in line with the context specific complex singularities of each victim.

This also leaves the scope for tailoring the common right to truth and justice to individual needs brought about by the singularities of each case. In the most general sense this would reflect that for some victims justice is to be narrowly interpreted as a prosecution of a victimiser while for others it can be dispensed through the disclosure of truth by those responsible for their victimisation (McEvoy and McConnachie 2012). Even in the latter we find scope for individual difference. In cases where bereavement or injury has resulted from indiscriminate attacks by non-state actors, victims might seek answers to why a particular place was targeted for an indiscriminate attack against non-combatants. In other cases like those where bereavement has resulted from pre-planned security force

ambushes of non-state actors the emphasis may be less on the reason for the violence that led to the victimisation but on more nuanced aspects like whether a warning was issued, whether the level of force used was proportionate and to what degree the killing was officially sanctioned (Rolston 2000). The same can be said for acknowledgment. Some victims may want an acknowledgment by non-state actors that they were responsible for their loved one's death or an acknowledgment from the state of the complicity of the security forces through collusion, while for others the more relevant acknowledgment may be that their loved one was not party to the conflict in the way initially claimed - whether that be erroneous claims by non-state actors that certain victims were informers or false claims by the state that certain victims were armed or moving suspiciously when shot.

Admittedly, this model would not be without difficulties. The politicisation of victimhood in both sites is deeply entrenched and will require a sustained effort to transform it. The creation of a victims 'industry' replete with 'professional victims' who are intent on injecting their own political will into the agenda yet are equally susceptible to political manipulation (Brewer 2010) points to the enormity of the task. Moreover, it may be argued that the proposed approach could end up substituting one form of political contestation of victimhood for another. The charge here may be that political contestation is no longer an ideological battle between 'innocent victims' and other victims but becomes one between 'innocent victims' themselves should some subscribe to the new shared identity while others opt to reject it on politicised grounds. However, should this in fact happen, it will be easier to expose as a nakedly ideological undertaking rather than as any endeavour that can be framed as victim-centric.

Notwithstanding this, the aim of this article in suggesting the new context-based approach, was not to fallaciously proffer it as a panacea to every problem stemming from the issue of political victimhood but rather to instigate a change in the paradigm for addressing political victimhood in divided societies from the *war by other means*, as currently constituted, into one understanding the complexities of political victimhood. The new paradigm would incorporate elements of the harm and blame based models, and would recognise the collective and individual aspects of political victimhood. It would, in fact, be a way to recognise victims' rights as a group and also their diversity as victims of complex victimisations. The final aim of this approach is to separate victims from broader political debates, which sometimes are more focused on confrontation than on finding points of convergence. Rather than trying to provide practical solutions to the many complex problems of political victimhood, this article has instead taken as its remit the task of moving the focus of the issue

onto newer terrain in order to stimulate and focus those efforts at practical solution as put forward by policy makers, practitioners and other academics.

5. Conclusions

As divided societies, political victimhood is a burning issue in Northern Ireland and the Basque Country. Learning from the experience in these cases, this article has argued for considering the specific circumstances of each violent event and it has offered some thoughts on a new framework to conceptualise victimhood in these societies. Political victimhood is a very sensitive issue and many victims who were not involved in politics during the conflict suddenly find themselves involved in a political battle. In this political fight, the complexities of each process of victimhood, as well as the needs and rights of each victim, should never be lost. The politics of the past, however, tend to reproduce the divisions of the past and the definition of victimhood becomes *war by other means*. As we analysed in this article, there are, at least, three different ways to approach political victimhood: the harm and blame based models, as well as the proposed new context based framework. The contribution of this article was to set some initial thoughts in the development of this context based model, which, despite not being exempt from limitations, constitutes an attempt to offer a fresh view on political victimhood considering all its complexities, including the individual and collective aspects of this type of victims.

The harm and blame based models are the approaches demanded by different actors in the transition (political actors, victims' groups, etc.), but both models seem to fall short in the process of conflict transformation because the fight between them is reproducing old divisions. For this reason, this article has proposed a third model that makes an attempt to overcome the limitations of the harm and blame based models. The context-specific model would be harm based in the sense that the suffering of victims would be at the centre, but it would also understand that each victimization was committed in specific circumstances. This new framework is an approach to respond to victims needs that rejects simplistic and dichotomous categories of victims, such as *victim and perpetrator* and *state and non-state* actors. The theoretical background of this model is the aim to transform victims' identities and promote a new understanding of politics and victimhood that overcomes the old divisions of the past. Ultimately, the promotion (or creation) of a shared or collective identity of victims of the conflict could strengthen the agency of victims in the overall process of conflict transformation. As we have

developed through this article, this new understanding of collective identity should include three critical elements: the recognition of the status of political victimhood, the connection between this status and the rights of the victims and the understanding of political victimhood as a multi-layered and complex concept.

ⁱ When we use the term 'Basque Country' we refer to the cultural or great Basque Country, which has two parts in Spain and one in France (called Iparralde or French Basque Country, which is integrated in the department of Aquitaine). The two parts in Spain are the Basque Autonomous Community (the BAC) and the Autonomous Community of Navarre. For comparative and analytical purposes, this research focuses on the Basque part in Spain. Therefore, when we use here 'Basque Country' we refer to the BAC and Navarre.

ⁱⁱ The involvement of Jonathan Powell (British diplomat who served as the first Downing Street Chief of Staff), Brian Currin (South African lawyer expert in conflict resolution), Chris MacCabe (former political director of the Northern Ireland Office) and the former Police Ombudsman for Northern Ireland (OPONI), Nuala O'Loan, in promoting a peace process in the Basque Country also demonstrates the links between the two places.

ⁱⁱⁱ The Victims and Survivors (Northern Ireland) Order 2006, Statutory Instrument, No. 2953 (NI.17).

^{iv} Several connexions exist between these groups in NI and the Basque Country. See: Philip Bradfield, 'Spanish model could offer a better way forward, say Troubles victims,' *News Letter*, 6 June 2013. For full text, see: <http://www.newsletter.co.uk/news/northern-ireland-news/spanish-model-could-offer-a-better-way-forward-say-troubles-victims-1-5163203#ixzz3quUo2AEP> (Last visited 03/01/2017).

^v Law 32/1999, 8 October, of Solidarity with Victims of Terrorism, The Spanish Congressional Record, No. 242; Law 29/2011, 22 September, of Recognition and Integral Protection to the Victims of Terrorism, The Spanish Congressional Record, No. 229; Law 4/2008, 19 June, of Recognition and Reparation of Victims of Terrorism, Basque Autonomous Community. The Congressional Record, No. 212; 'Foral' Law about Benefits for Victims of Terrorism, 28 April 2010, Official Record from the Autonomous Community of Navarre, No. 57.

^{vi} Decree 107/2012 of Declaration and Holistic Reparation of Victims of Unjust Suffering as a Consequence of Violations of Human Rights in the Basque Autonomous Community between 1968 and 1978 in a context of politically motivated violence, Justice and Public Administration department, Basque government, The Congressional Record, No. 119, June 2012. Modification of this Decree by the Decree 426/2013, 16 October 2013; 'Foral' Law (Navarre) of Recognition and Reparation to Victims of Politically Motivated Actions by Right Wing Groups or Public Servants, 10 April 2015, Official Record from the Autonomous Community of Navarre, No. 71; Law 12/2016, 28 July, to Recognise and Repair Victims of Human Rights Violations of Political Motivation in the Basque Autonomous Community between 1978 and 1999.

^{vii} The Spanish government denied the increase in compensation to 46 individuals who were allegedly connected to ETA. In addition the Spanish authorities have introduced legal challenges against the legislation passed in 2015 and 2016 to recognise victimism of police abuse. These challenges have not been solved yet.

^{viii} In 2013, the Basque government requested a report on the decision of Spanish government and in January 2014, the Basque Institute of Criminology (part of the University of the Basque Country) issued the report that argues the decision of the Spanish government was "administrative prevarication" since the evidence given to connect the victims concerned and ETA breached the "presumption of innocence." The court cases are still ongoing.

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